plant disease known as "cedar rust." The legislature accordingly enacted a rather elaborate statute authorizing the state entomologist to order the destruction of infected cedar trees adjacent to apple orchards. From the summary proceeding and judgment of the entomologist an appeal was allowed. In some instances damages were recoverable. A failure to destroy the trees as ordered was unlawful. (VA. ACTS 1914, p. 49.) *Held*, that the statute is constitutional. *Bowman* v. *Virginia State Entomologist*, 105 S. E. 141 (Va.).

Reasonable regulations to protect the agricultural industry from the ravages of pests and infection have often been upheld as within the limits of legitimate police regulation. *Los Angeles Co.* v. *Spencer*, 126 Calif. 670, 59 Pac. 202; *State* v. *Main*, 69 Conn. 123, 37 Atl. 80. And it is no objection that the regulation entails the destruction of private property. *Balch* v. *Glenn*, 85 Kans. 735, 119 Pac. 67; *State Board* v. *Tanzman*, 140 La. 756, 73 So. 854. Undeniably the methods adopted by the legislature must be reasonable. And as for this particular statute it is submitted that its detailed safeguards and provisions are commendable in every respect. To be sure, the legislature might have provided for compensation analogous to that given in eminent domain proceedings. This, however, is a consideration for the legislature alone. As has already been indicated, once having established that the destruction of private property in a particular case comes under the scope of the police power, the owner can be denied a remedy for the loss sustained. *Mugler* v. *Kansas*, 123 U. S. 623; *State Board* v. *Tanzman*, *supra*. The principal case is clearly right. Indeed the case is but another illustration of the numerous futile attacks upon legislation clearly valid under the police power.

CONSTITUTIONAL LAW — POWERS OF THE EXECUTIVE — MARTIAL LAW — TRIAL OF CIVILIAN BY MILITARY COURT. — The Governor of Texas, reciting that there had been acts of violence and danger of insurrection in Galveston and that the city authorities as well as the judge of the city court had failed to maintain order, declared the city to be in a state of martial law, suspended the city officials, and directed the general commanding the state militia to enforce order and to execute the civil law. Pursuant to this order a provost judge superseded the judge of the city court. All the other civil justices continued to perform their duties. The relator was arrested for overspeeding, tried by the provost judge, despite his request for a jury trial, sentenced to pay a fine, and committed to jail in default of payment. He now petitions for a writ of *habeas corpus*. *Held*, that the petition be denied. *United States ex. rel. McMaster* v. *Wolters*, 268 Fed. 69 (Dist. Ct. S. D. Tex.).

For a discussion of this case see NOTES, page 659, *supra*.

CONSTITUTIONAL LAW — POWERS OF THE JUDICIARY — ADVISORY OPINIONS — OBLIGATION OF COURTS TO GIVE SAME. — The Constitution of South Dakota empowers the governor to require the opinions of the Supreme Court justices upon important questions of law involved in the exercise of his executive powers and upon solemn occasions. The governor seeks their opinion as to the constitutionality of an act authorizing a $250,000 state bond issue. Bonds to the amount of $200,000 have already been issued and sold to holders. *Held*, that such opinion shall not be given. *In re Opinion of the Judges*, 180 N. W. 64 (S. D.).

The virtues and vices of advisory opinions have heretofore been minutely examined. See 3 HARV. L. REV. 228; 10 HARV. L. REV. 50; H. A. Dubuque, "The Duty of Judges as Constitutional Advisers," 24 AM. L. REV. 369. Great jurists have found the vices preponderant. See Story, J., in MASS. CONVENTION DEBATES (1820), 72; Morton, J., in 2 MASS. CONVENTION DEBATES (1853), 684; Greenleaf, *ibid*. Yet to-day the constitutions of several states provide that the governor or the legislature may require of the state supreme court advisory opinions on solemn occasions and on questions of law. See MASS. CONST., part

2, c. 3, sec. 2; So. Dak. Const., art. 5, sec. 13; N. H. Const., part 2, sec. 73; R. I. Const., art. 10, sec. 3; etc. If in accordance with this constitutional right the proper authority requires of a court its opinion, that court must be bound to answer. The one asking should be, in right and logic, the proper judge of the reasonableness of the demand or the solemnity of the occasion. See 26 Harv. L. Rev. 655; H. A. Dubuque, "The Duty of Judges as Constitutional Advisers," *supra*, 386. But see *In re Penitentiary Com'rs.*, 19 Colo. 409, 35 Pac. 915; *In the Matter of the North Missouri R. R.*, 51 Mo. 586; *Opinion of the Justices*, 148 Mass. 623, 21 N. E. 439; *Opinion of the Justices*, 95 Me. 564, 51 Atl. 224, *contra*. Of course, if the request is patently unreasonable, frivolous, or in excess of the scope of the constitutional provision, the court may refuse, for such questions it is not bound to answer. But in the principal case the request is reasonable and within the express scope. In refusing to answer, the court flies in the face of the state Constitution. That its reasons for refusing are the excellent reasons always to be advanced against any court's giving *ex parte* advice cannot ameliorate the error. The duty of the Supreme Court is to observe the constitution as it is framed, not as it should be framed.

Corporations — Directors and Other Officers — Knowledge of a Director as Knowledge of a Corporation. — The defendant corporation, which held certain stock as pledgee and was about to exercise its power to sell to the highest bidder, appointed three directors to find a purchaser. Two other directors received a bid from a prospective purchaser and, scheming for individual profit, advised him to make a smaller bid. The smaller bid was made to the three directors and was accepted by all the directors sitting as a board. The plaintiff as assignee of the pledgor sued for the alleged conversion of this stock on the ground that the knowledge of the two directors of the larger bid was notice to the corporation. *Held*, that such knowledge is not imputed to the corporation. *Western Securities Co.* v. *Silver King Consol. Mining Co.*, 192 Pac. 664 (Utah).

For a discussion of this case see Notes, page 656, *supra*.

Damages — Measure of Damages — Compensation for Loss of Use of Personal Property. — Defendant wrongfully detained plaintiff's road-making outfit. Plaintiff sued for its return with damages for the value of its use during the period of detention. Defendant requested an instruction that, in determining the "use value," the jury should ". . . limit the same to the reasonable value of the use of said outfit . . . devoted to such use as the plaintiff had carried on prior to the seizure." This was refused. *Held*, that the instruction should have been given. *Montgomery* v. *Gallas*, 225 S. W. 557 (Tex.).

In an action of replevin the damages usually allowed are the interest on the capital value of the property for the period of wrongful detention. *Wadleigh* v. *Buckingham*, 80 Wis. 230, 49 N. W. 745; *Redmond* v. *American Mfg. Co.*, 121 N. Y. 415, 24 N. E. 924. See 4 Sutherland, Damages, 4 ed., § 1144. But, since the purpose of damages is adequate compensation, where the value of the use of the property exceeds such interest, it may be substituted therefor. *Allen* v. *Fox*, 51 N. Y. 562; *Forsee* v. *Zenner*, 193 S. W. (Mo.) 975. See Wells, Replevin, 2 ed., §§ 582, 583. The recognized test for ascertaining, with the requisite certainty, this "use value" is rental value. *Ocala Foundry Works* v. *Lester*, 49 Fla. 199, 38 So. 51; *MacKenzie* v. *Steeves*, 98 Wash. 17, 167 Pac. 50. It cannot be measured by the profits expected from the plaintiff's anticipated use of the property. *Williams* v. *Wood*, 55 Minn. 323, 56 N. W. 1066. See *Aber* v. *Bratton*, 60 Mich. 357, 362, 27 N. W. 564, 566. The principal case proposes a more definite criterion. See 1 Sedgwick, Damages, 9 ed., § 171 (b). It substitutes for the market value of the use the market value of the plaintiff's